

DOWD, J.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

United States of America,)	
)	CASE NO. 3:04 CV 7205
Plaintiff(s),)	
)	
v.)	<u>MEMORANDUM OPINION</u>
)	<u>AND ORDER</u>
Gregg Battersby, et al.,)	
)	
Defendant(s).)	
)	

Before the Court is the motion of the plaintiff to dismiss defendant Amy Battersby's affirmative defense of dower rights in the property against which the United States is attempting to enforce its tax liens (Doc. No. 80). Amy Battersby has filed a response (Doc. No. 83) and the plaintiff has filed a reply (Doc. No. 85). Even though the Court stayed the proceedings against Amy Battersby on September 29, 2005 (Doc. No. 81),¹ the instant motion involves a question of law, resolution of which will not prejudice this defendant. The defendant obviously concedes that point, since she responded to the motion even after the stay order was in place. Therefore, the matter is ripe for determination. By ruling on this motion, the Court does not intend to lift the stay of proceedings against Amy Battersby and the Kirtland property in which she has an interest.

¹ The stay was ordered based on the fact that Amy Battersby has applied to the Internal Revenue Service for "innocent spouse relief."

(3:04 CV 7205)

As properly pointed out by the plaintiff, in order for a dower right to compete against a federal tax lien, the dower interest must be choate, i.e., ripened or perfected, before the tax lien arises. United States v. City of New Britain, Conn., 347 U.S. 81, 86 (1954). In Ohio, “dower is a contingent inchoate right and becomes vested in the surviving spouse only upon the death of the other spouse.” Goodman v. Gerstle, 158 Ohio St. 353, 358, 109 N.E.2d 489, 492 (1952).

Here, Amy Battersby’s husband Greg was alive at the time the tax assessments were made against him. In fact, he is still alive. Therefore, Mrs. Battersby’s dower rights were not choate and cannot take precedence over the tax liens that attached to the subject properties at the time of the assessments.

Accordingly, the plaintiff’s motion (Doc. No. 80) is granted and Amy Battersby’s affirmative defense of dower right is dismissed.

IT IS SO ORDERED.

November 29, 2005
Date

s/ David D. Dowd, Jr.
David D. Dowd, Jr.
U.S. District Judge